

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

ERIQ R. McCORKLE,

:

Petitioner,

Case No. 3:21-cv-345

- VS -

District Judge Thomas M. Rose
Magistrate Judge Michael R. Merz

WARDEN, Southeast Correctional
Institution,

Respondent.

:

**ORDER OVERRULING PETITIONER'S OBJECTIONS TO THE MAGISTRATE
JUDGE'S DECISION REGARDING PETITIONER'S LEAVE TO CONDUCT
DISCOVERY (DOC. NO. 16); OVERRULING PETITIONER'S OBJECTIONS TO THE
MAGISTRATE JUDGE'S SUPPLEMENTAL OPINION FILED ON APRIL 13, 2022
(DOC. NO. 21); OVERRULING PETITIONER'S OBJECTIONS TO THE REPORT
AND RECOMMENDATION (DOC. NO. 20); ADOPTING REPORT AND
RECOMMENDATION REGARDING THE PETITION FOR WRIT OF HABEAS
CORPUS (DOC. NO. 15); DISMISSING, WITH PREJUDICE, THE PETITION FOR
WRIT OF HABEAS CORPUS (DOC. NO. 1); DENYING A CERTIFICATE OF
APPEALABILITY; AND TERMINATING THIS CASE**

On April 13, 2022, United States Magistrate Judge Michael R. Merz issued a Decision and Order denying the motion for leave to conduct discovery filed by Petitioner Eriq R. McCorkle (“Petitioner”). (Doc. No. 13; Doc. No. 14.) Petitioner filed a Notice of Objection to that order (Doc. No. 16), the undersigned recommitted this matter to Magistrate Judge Merz for his analysis of the Notice of Objection (Doc. No. 17), and Magistrate Judge Merz issued a Supplemental Opinion on Discovery (Doc. No. 18). Petitioner then filed Objections to that Supplemental Opinion. (Doc. No. 21.) The Court has considered Petitioner’s Notice of Objection (Doc. No. 16) and Petitioner’s Objections to the Supplemental Opinion (Doc. No. 21) in accordance with Federal

Rule of Civil Procedure 72(a). The Court finds that Petitioner's objections in Petitioner's Notice of Objection (Doc. No. 16) and in Petitioner's Objections to the Supplemental Opinion (Doc. No. 21) are not well-taken and are **OVERRULED**.

Additionally, on December 30, 2021, Petitioner filed a Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody (Doc. No. 1) (the "Petition"), which contains one ground for relief. Magistrate Judge Merz, to whom this case was referred pursuant to 28 U.S.C. § 636(b), issued a Report and Recommendation in which he recommended that the Petition be dismissed with prejudice, Petitioner be denied a certificate of appealability, and the Court certify to the Sixth Circuit Court of Appeals that any appeal would be objectively frivolous and should not be permitted to proceed *in forma pauperis*. (Doc. No. 15.) Petitioner filed a Notice of Objections to the Report and Recommendation.¹ (Doc. No. 20.) No response to the Notice of Objections to the Report and Recommendation has been filed, and the time to do so has now passed. Fed. R. Civ. P. 72(b)(2). The matter is ripe for the Court's review.

As required by 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72(b), the Court has made a *de novo* review of the record in this case. Upon said review, the Court finds that Petitioner's objections (Doc. No. 20) are not well-taken and they are **OVERRULED**. The Court **ACCEPTS** the Report and Recommendation (Doc. No. 15) and its recommended disposition, **ADOPTS** the Report and Recommendation (Doc. No. 15) in its entirety, and rules as follows:

1. The Petition (Doc. No. 1) is **DISMISSED WITH PREJUDICE**;
2. As reasonable jurists would not disagree with this conclusion, Petitioner is **DENIED** any requested certificate of appealability;

¹ Magistrate Judge Merz issued the Report and Recommendation on April 8, 2022. (Doc. No. 15.) Petitioner's Notice of Objections to the Report and Recommendation was filed on May 3, 2022, and its certificate of service is neither dated nor signed (Doc. No. 20); although untimely, the Court still considers it in making its rulings in this Order.

3. The Court **CERTIFIES** to the Sixth Circuit Court of Appeals that any appeal would be objectively frivolous and therefore should not be permitted to proceed *in forma pauperis*;
4. The Clerk is directed to **NOTIFY** the Petitioner; and
5. The Clerk is ordered to **TERMINATE** this case on the docket of this Court.

DONE and **ORDERED** in Dayton, Ohio, this Tuesday, May 31, 2022.

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE